

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

COREY LORENZO WOODFOLK,
Petitioner

v.

UNITED STATES OF AMERICA,
DONALD ROMINE,
Respondents

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CIVIL ACTION NO.: 01-CV-867

(Judge Kane)

FILED
HARRISBURG

FEB 27 2003

MARY E. DANDREA, CLERK

Per

DEPUTY CLERK

MEMORANDUM AND ORDER

Before the Court is Petitioner's motion to amend his writ of habeas corpus pursuant to Federal Rule of Civil Procedure 15(a). Petitioner seeks to add deprivation of the right to counsel during his arraignment proceeding as a ground for his writ. For the reasons that follow, the motion will be denied.

I. BACKGROUND

This action is one of several habeas claims petitioner has made, with this and other courts, challenging his conviction after pleading guilty to conspiracy to distribute and possession with intent to distribute heroin in violation of 21 U.S.C. § 846. By order of this Court dated June 8, 2001 (Doc. No. 3), Petitioner's claims were dismissed. Because it was clear from the petition that Petitioner was not entitled to relief in this Court, his complaint was dismissed without the issuance of a summons or receipt of an answer or other pleadings. On June 11, 2001 Petitioner filed the instant motion (Doc. No. 4) and on June 14, 2001 Petitioner filed a notice of appeal (Doc. No 5).

II. DISCUSSION

Petitioner characterized his motion as one to amend the pleading pursuant to Federal

Rule of Civil Procedure 15(a). Since his motion was filed shortly after this Court entered judgment dismissing Petitioner's claim, it may also be characterized as a motion for relief from judgment or order pursuant to Federal Rule of Civil Procedure 60. As Plaintiff is a pro se petitioner, this Court must construe all pleadings liberally. Boag v. MacDougall, 454 U.S. 364, 365 (1982); Todaro v. Bowman, 872 F.2d 43, 44 n. 1 (3d Cir. 1989). Accordingly, Petitioner's motion will be analyzed under both theories.

A. Rule 15(a)

Rule 15(a) states, in relevant part, a "party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). While this Rule requires that leave to amend should be "freely given," this court has discretion to deny the request if it is apparent from the record that "(1) the moving party has demonstrated undue delay, bad faith or dilatory motives, (2) the amendment would be futile, or (3) the amendment would prejudice the other party." Lake v. Arnold, 232 F.3d 360, 373 (3d Cir. 2000) (citing Foman v. Davis, 371 U.S. 178, 182, (1962)). Amending a pleading is futile if the pleading, as amended, would fail to state a claim upon which relief could be granted. Shane v. Fauver 213 F.3d 113, 115 (3d Cir. 2000). In assessing futility, this Court applies the same standard of legal sufficiency as applies under Rule 12(b)(6). Id. Accordingly, leave to amend generally must be granted unless the amendment would not cure the deficiency.

In his original filing, Petitioner insisted that this action not be construed as a motion under 28 U.S.C. § 2255 since, he argued, that section provided an inadequate remedy. This Court did not construe the petition under §2255 and ultimately dismissed the petition because §2255 is the exclusive means by which Petitioner may challenge his conviction or sentence.

The law is clear that to seek federal post-conviction relief from a judgment of conviction, persons convicted in federal court are required to bring their collateral attacks challenging the validity of their conviction and sentence by filing a motion to vacate sentence pursuant to 28 U.S.C. § 2255, with the court that imposed the conviction. See 28 U.S.C. § 2255; Davis v. United States, 417 U.S. 333, 343, (1974). The only exception is when § 2255 proves “inadequate or ineffective” to test the legality of a prisoner’s detention. 28 U.S.C. § 2255; Davis, 417 U.S. at 343.

As explained in this Court’s previous order in this case (Doc. No. 3) and in this Court’s dismissal of Petitioner’s previous application for a writ,¹ Petitioner is unable to bring himself within the exception to § 2255. Petitioner has already brought a §2255 attack on his conviction. His §2255 action, his appeal and his request for leave to file a second or successive §2255 petition were all denied. Petitioner’s claim that this renders §2255 inadequate or ineffective to test the legality of his detention is without merit. “Section 2255 is not inadequate or ineffective merely because the sentencing court does not grant relief.” Cradle v. United States, 290 F.3d 536 (3d Cir. 2002). Since this Court will not construe Petitioner’s claim as a § 2255 claim against Petitioner’s wishes, and since § 2255 is the only remedy available to Petitioner, his claim was dismissed as he failed to state a claim upon which relief could be granted. Petitioner’s proposed amendment to his claim would not cure this deficiency, and therefore, his motion will be denied as futile.

B. Rule 60

Rule 60(b) states, in relevant part;

1. See Civil Action No. 01-CV-194, Doc. No. 9 (Order, dated April 30, 2001, adopting the Magistrate Court’s recommendation to dismiss Petitioner’s habeas action.)

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P 60(b). Even the most liberal reading of Petitioner's motion to amend does not reveal any basis to excuse his attempt to add, after judgment has been rendered, deprivation of the right to counsel during his arraignment proceeding as a ground for his writ. There is, therefore, no basis to relieve him from the judgment dismissing his claims.

III. ORDER

Accordingly, **IT IS ORDERED THAT** Petitioner's motion to amend the pleadings (Doc. No. 4) is **DENIED**.



Yvette Kane
United States District Judge

Dated: 26 Feb, 2003

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